

WHEN RECORDED, RETURN TO:

City of Tempe Basket

DEVELOPMENT AND DISPOSITION AGREEMENT

[c2012-]

THIS DEVELOPMENT AND DISPOSITION AGREEMENT (“Agreement”) is made as of the _____ day of _____, 2012 (the “Effective Date”), among the **CITY OF TEMPE**, an Arizona municipal corporation (“City”), and Core Campus Tempe I LLC, a Delaware limited liability company (“Developer”).

RECITALS

A. Developer has acquired a site within the City of Tempe, located at 323 E. Veterans Way and legally described in ***Exhibit A*** (the “Property”), on which it intends to construct a student housing project consisting of two phases, namely, “Phase 1” and “Phase 2”, all as more particularly described on ***Exhibit B*** attached hereto (the “Project”).

B. Developer has commenced construction of Phase 1 of the Project.

C. City and Developer hereby acknowledge and agree that significant benefits will accrue to City from the development of the Project by Developer, including, without limitation, increased tax revenues, the creation of jobs in the City, and that the Project will otherwise improve or enhance the economic welfare of the inhabitants of the City.

D. City hereby finds that upon execution of this Agreement, the conditions stated in Resolution 2010.76 will have been satisfied provided that the Government Property Lease is executed on or before May 20, 2020.

E. This Agreement is a development agreement within the meaning of A.R.S. §9-500.05 and shall be construed as such.

AGREEMENT

NOW THEREFORE, in consideration of the above premises, the promises contained in this Agreement and for good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

The following terms shall have the meanings set forth below whenever used in this Agreement, except where the context clearly indicates otherwise:

1.1 “Certificate of Occupancy” means a certificate of occupancy for the Project, or portions thereof, issued by the Community Development Department and City Public Works Department of the City of Tempe.

1.2 “City” means the City of Tempe, an Arizona municipal corporation, and any successor public body or entity.

1.3 “Developer” means Core Campus Tempe 1 LLC, a Delaware limited liability company, and its permitted successors and assigns.

1.4 “Force Majeure” means a delay caused by fire, earthquake, unusual weather conditions for Tempe, Arizona or other acts of God, acts of public enemies, riot, insurrection, governmental regulation of the sale of materials and supplies or the transportation thereof, strikes directly affecting the work of construction, shortages of material or labor resulting directly from general market shortages, governmental control or diversion and other similar causes beyond Developer’s reasonable control, excluding financial difficulty or inability, and for which Developer gives notice within a commercially reasonable time but not later than 48 hours after the event or occurrence.

1.5 “Improvements” means all the improvements which may be constructed from time to time as part of the Project, including, without limitation, buildings, structures, utilities, driveways, parking areas, walls, landscaping and other improvements of any type or kind to be built by Developer.

1.6 “Project” means the student housing project described on *Exhibit B*.

1.7 “Retail Space” means that portion of the Project reserved for retail uses as designated on *Exhibit B*.

1.8 “Substantial Completion” or “Substantially Complete” means Phase 1 or Phase 2, as the case may be, of the Project can be occupied for its intended use.

ARTICLE II DEVELOPMENT PLAN

2.1 Duration of Development Agreement. Notwithstanding an earlier termination under Section 3.2 below, the term of this Agreement shall commence on the Effective Date and continue until the earlier of expiration of the Government Property Lease (defined in Section 3.4) or May 20, 2020.

2.2 General Cooperation. City agrees to use its reasonable best efforts to assist Developer or its affiliates in the development of the Project, including any assistance with other governmental agencies as appropriate.

ARTICLE III DEVELOPMENT MATTERS

3.1 Schedule of Performance. City and Developer intend that Phase 1 of the Project shall be developed pursuant to, and in accordance with, the milestones set forth on the “Schedule of Performance” attached hereto as ***Exhibit C***. Developer shall use commercially reasonable efforts to develop Phase 1 of the Project in accordance with the Schedule of Performance.

3.2 Compliance with Schedule of Performance. Subject to Force Majeure and any extensions granted by City, if Developer fails to Substantially Complete Phase 1 of the Project in accordance with the Schedule of Performance, then this Agreement shall automatically terminate. No notice of such termination shall be required, as the passage of time without completion of the appointed task cannot be cured. Developer is free at any time to request an extension of the dates set forth in the Schedule of Performance; however, City may grant or deny any such request in its unfettered discretion. If Developer notifies City of the occurrence of a Force Majeure event, it shall be entitled to a day for day extension of the time periods stated in the Schedule of Performance but not more than 90 days after the occurrence of such event.

3.3 Development Plan. Developer shall, at its sole cost and expense, develop Phase 1 of the Project and, Phase 2 of the Project in the event Developer determines to proceed with Phase 2 of the Project, in general conformance with the description of the Project attached hereto as ***Exhibit B***. Such description of the Project presently calls for construction of a mixed use development including residential housing, with ground floor retail. The description of the Project attached hereto as ***Exhibit B*** sets forth the current plan for development of the Property; however, the specific locations of the buildings, structures and uses are further defined in the Amended Planned Area Development (PAD) Overlay for 323 E. Veterans Way (Ordinance N0. 2011.45).

3.4 Agreement to Purchase City Right of Way. Developer has requested that City sell to Developer fee title to the triangular-shaped parcel located at the Southeast corner of College Avenue and Veterans Way, which parcel was dedicated to City by the Plat recorded in book 954 of maps, page 20, Official Records of Maricopa County, Arizona, and is depicted on the diagram attached hereto as ***Exhibit A-1*** (the “ROW Parcel”). City hereby agrees to sell the ROW Parcel to Developer at a purchase price equal to \$67.47 per square-foot. Developer shall complete the purchase of the ROW Parcel prior to the first anniversary of the Effective Date.

3.4.1 As-Is Purchase. Developer acknowledges and agrees that it is acquiring the ROW Parcel AS IS, WHERE IS, and that the only representations or warranties made by the City with respect to the ROW Parcel are those set forth in this Agreement and the Deed by which the City will convey the ROW Parcel to Developer. Developer acknowledges that it is accepting the ROW Parcel in its AS IS condition, and assumes the risks associated with the condition thereof.

3.5 Government Property Lease. City hereby acknowledges and agrees that if the Project is completed as contemplated in compliance with the Schedule of Performance (as it may be amended or extended) and Developer has otherwise satisfied its obligations, in all material respects, under this Agreement (taking into account all applicable cure periods, if any), then Developer shall be entitled to all statutorily-authorized property tax abatements available pursuant to the provisions of A.R.S. §§ 42-6201 through 42-6209, inclusive, as in effect on May 20, 2010 which were reserved in Resolution 2010.76. Upon execution of this Agreement, the conditions stated in Section 2 of such Resolution shall have been satisfied. No in-lieu payment referenced in Section 3 of such Resolution is required. Upon issuance of a Certificate of Occupancy for Phase I of the Project, (i) the Property shall be conveyed to City by a special warranty deed in substantially the form of ***Exhibit D*** attached hereto, or a form otherwise mutually acceptable to City and Developer, and (ii) City shall lease back the Property to Developer pursuant to a separate Land and Improvements Lease substantially in the form attached hereto as ***Exhibit E***, or a form otherwise mutually acceptable to the City and the Developer (the "Government Property Lease"). The term of the Government Property Lease shall not exceed 6 years from the date of conveyance of the Property to the City. The Property must be conveyed to City within 180 days after issuance of the first Certificate of Occupancy for the Project but not more than one year after the date of Substantial Completion of Phase 1. The City agrees that the Property may be conveyed to the City subject to the lien of a fee deed of trust executed by Developer as the trustor, in which event, while the City shall have no personal liability under such fee deed of trust, the City's interest in the Property shall be subject and subordinate to the lien of such fee deed of trust. The parties acknowledge that at the time of this Agreement, construction has already commenced on the Project.

ARTICLE IV DEFAULT; REMEDIES; TERMINATION

4.1 Default. It shall be a default hereunder if either party fails to perform any of its obligations hereunder and such failure continues for a period of thirty (30) days after written notice from the non-defaulting party specifying in reasonable detail the nature of such failure; provided that if the nature of the default is such that it cannot reasonably be cured within the thirty-day period, no default shall be deemed to exist if the defaulting party commences a cure within that thirty-day period and diligently and expeditiously pursues such cure to completion.

4.1.1 Additional Developer Defaults. In addition to the foregoing, it shall be a default hereunder if: (a) any petition or application for a custodian, as defined by Title 11, United States Code, as amended from time to time (the "Bankruptcy Code") or for any form of relief under any provision of the Bankruptcy Code or any other law pertaining to reorganization,

insolvency or readjustment of debts is filed by or against Developer or any partnership of which Developer is a partner, their respective assets or affairs, and such petition or application is not dismissed within ninety (90) days of such filing; (b) Developer makes an assignment for the benefit of creditors, is not paying material debts as they become due, or is granted an order for relief under any chapter of the Bankruptcy Code; (c) a custodian, as defined by the Bankruptcy Code, takes charge of any property of Developer or any property of any partnership of which Developer is a partner; (d) garnishment, attachment, levy or execution in an amount in excess of an amount equal to ten percent (10%) of its net worth is issued against any of the property or effects of Developer, or any partnership of which Developer is a partner, and such issuance is not discharged or bonded against within ninety (90) days; (e) the dissolution or termination of existence of Developer unless its successor by transfer or operation of law is continuing the business of operating the Project; or (f) there is a material breach of any representation and warranty by Developer in this Agreement when made.

4.2 Dispute Resolution. If the parties cannot resolve any dispute that arises out of this Agreement between themselves, the parties agree that there shall be a forty-five (45) day moratorium on litigation during which time the parties agree to attempt to settle the dispute by nonbinding mediation before commencement of litigation. The mediation shall be held under the commercial mediation rules of the American Arbitration Association. The matter in dispute shall be submitted to a mediator mutually selected by Developer and the City. In the event that the parties cannot agree upon the selection of a mediator within seven (7) days, then within three (3) days thereafter, the City and the Developer shall request the presiding judge of the Superior Court in and for the County of Maricopa, State of Arizona, to appoint an independent mediator. The mediator selected shall have at least five (5) years' experience in mediating or arbitrating disputes relating to commercial property development. The cost of any such mediation shall be divided equally between the City and Developer, or in such other fashion as the mediator may order. The results of the mediation shall be nonbinding on the parties, and any party shall be free to initiate litigation upon the conclusion of mediation.

4.3 Developer's Remedies. If City is in default under this Agreement (beyond any applicable cure period) and the parties do not resolve the City's default pursuant to the nonbinding mediation described in Section 4.2, Developer shall have the right to terminate this Agreement upon written notice to the City. The Developer shall also have the right to pursue all other legal and equitable remedies which the Developer may have at law or in equity, including, without limitation, the right to seek specific performance, the right to seek and obtain damages and the right to self-help; provided that City shall in no event be liable for punitive, incidental or consequential damages.

4.4 City's Remedies. If the Developer is in default under this Agreement (beyond any applicable cure period) and the parties do not resolve the Developer's default pursuant to the nonbinding mediation described in Section 4.2, then the City shall have the right to terminate this Agreement immediately upon written notice to Developer and to pursue any other rights or remedies provided hereunder, at law or in equity; provided that Developer shall in no event be liable for punitive, incidental or consequential damages.

4.5 Effect of Event of Termination. Upon the termination of this Agreement as the result of the default or breach by the Developer (beyond any applicable cure period), the Developer shall have no further rights to the City-provided development incentives pursuant to this Agreement accruing from and after the termination of this Agreement.

ARTICLE V GENERAL PROVISIONS

5.1 No Personal Liability. No member, shareholder, director, partner, manager, officer or employee of Developer shall be personally liable to City, or any successor or assignee, (a) in the event of any default or breach by the Developer, (b) for any amount which may become due to the City or its successor or assign, or (c) pursuant to any obligation of Developer under the terms of this Agreement.

5.2 No Personal Liability. No member, official or employee of the City shall be personally liable to Developer, or any successor or assignee, (a) in the event of any default or breach by the City, (b) for any amount which may become due to the Developer or its successor or assign, or (c) pursuant to any obligation of the City under the terms of this Agreement.

5.3 Liability and Indemnification. Developer hereby agrees to indemnify, protect, defend and hold harmless the City, its Council members, officers, employees, and agents from any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and cleanup actions of any kind, all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorney's fees and costs of defense arising, directly or indirectly, in whole or in part, out of Developer's performance or failure to perform its obligations under this Agreement, including any third party claims relating to environmental conditions on the Property.

5.4 Conflict of Interest. Pursuant to Arizona law, rules and regulations, no member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested. This Agreement is subject to A.R.S. § 38-511.

5.5 Notice. All notices which shall or may be given pursuant to this Agreement shall be in writing and transmitted by registered or certified mail, return receipt requested, or by personal delivery or by overnight mail, addressed as follows:

To Developer:

Marc Lifshin
Core Campus Tempe 1 LLC
2234 W North Ave
Chicago, IL 60647

With a copy to: Manjula Vaz
Gammage & Burnham
Two North Central, Suite 1800
Phoenix, AZ 85004

and David Nelson
DRW Holdings LLC
540 W. Madison, Suite 2500
Chicago, IL 60661

To the City: City Manager
City of Tempe
31 East Fifth Street
Tempe, Arizona 85281

With a copy to: City Attorney
City of Tempe
21 East Sixth Street, Suite 201
Tempe, Arizona 85281

Either party may designate any other address for this purpose by written notice to the other party in the manner described herein. The date of service of any communication hereunder shall be the date of personal delivery or seventy-two (72) hours after the postmark on the certified or registered mail, or the date received if sent by overnight mail, as the case may be.

5.6 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona. This Agreement has been made and entered into in Maricopa County, Arizona.

5.7 Successors and Assigns. This Agreement shall run with the land and all of the covenants and conditions set forth herein shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

5.8 Waiver. No waiver by either party of any breach of any of the terms, covenants or conditions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same for any other term, covenant or condition herein contained.

5.9 Severability. In the event that any phrase, clause, sentence, paragraph, section, article or other portion of this Agreement shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in full force and effect to the fullest extent permitted by law, provided that the overall intent of the parties is not materially vitiated by such severability.

5.10 Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and all prior and contemporaneous

agreements, representations, negotiations and understandings of the parties hereto, oral or written, are hereby superseded and merged herein.

5.11 Attorneys' Fees. In the event of any actual litigation between the parties in connection with this Agreement, the party prevailing in such action shall be entitled to recover from the other party all of its costs and fees, including reasonable attorneys' fees, which shall be determined by the court and not by the jury.

5.12 Schedules and Exhibits. All schedules and exhibits attached hereto are incorporated herein by this reference as though fully set forth herein.

5.13 Recordation of Agreement. This Agreement shall be recorded in the Official Records of Maricopa County, Arizona, within ten (10) days after execution of this Agreement by the City.

5.14 City Manager's Power to Consent. The City authorizes and empowers the City Manager to consent to any and all requests of the Developer requiring the consent of the City hereunder without further action of the City Council, except for any actions requiring City Council approval as a matter of law, including, without limitation, any amendment or modification of this Agreement.

{Remainder of page intentionally left blank}

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed on or as of the day and year first above written.

ATTEST:

“CITY”

THE CITY OF TEMPE, an Arizona municipal corporation

City Clerk

APPROVED AS TO FORM:

By _____
Hugh L. Hallman, Mayor

City Attorney

STATE OF ARIZONA)
)
COUNTY OF MARICOPA) ss

The foregoing instrument was acknowledged before me this ____ day of _____, 2011, by Hugh L. Hallman, the Mayor of the City of Tempe.

Notary Public

My Commission Expires:

“DEVELOPER”

Core Campus Tempe 1 LLC, a Delaware
limited liability company

By: DRW Real Estate Management I LLC
Its: Manager

By: _____
Name _____
Title _____

STATE OF ARIZONA)
)
COUNTY OF MARICOPA) ss

The foregoing instrument was acknowledged before me this ____ day of _____, 2011.

Notary Public

My Commission Expires:

EXHIBIT A
THE “PROPERTY”

PARCEL 1: LOT 1, 323 EAST VETERANS WAY, ACCORDING TO BOOK 954 OF MAPS, PAGE 20, OFFICIAL RECORDS OF MARICOPA COUNTY, ARIZONA.

PARCEL 2: THAT BENEFICIAL AND APPURTENANT EASEMENT FOR INGRESS AND EGRESS AS SET FORTH IN INSTRUMENT NUMBER 2006-1648123, OFFICIAL RECORDS OF MARICOPA COUNTY.

EXHIBIT A-1
THE “RIGHT OF WAY PROPERTY”

THE 20' x 20' x 23.45' PORTION OF PROPERTY LOCATED AT THE
SOUTHEAST CORNER OF COLLEGE AVENUE AND VETERAN'S WAY
DEDICATED TO THE CITY OF TEMPE ON THE PLAT “323 EAST VETERANS
WAY”, RECORDED IN BOOK 954 OF MAPS, PAGE 20, OFFICIAL RECORDS
OF MARICOPA COUNTY, ARIZONA.

EXHIBIT B THE “PROJECT”

The Project will consist of a two phase, multi-story, mixed-use project with approximately 423 residential dwelling units, approximately 25,644 ft² of retail space and approximately 3,050 ft² of mezzanine retail space (the “Retail Space”), and an approximately 200 stall parking garage.

“Phase 1” of the Project consists of approximately 410,147 gross square feet, including approximately 269 units, approximately 637 beds, approximately 200 parking stalls and approximately 25,644 ft² of Retail Space.

“Phase 2” of the Project consists of approximately 100,00 gross square feet, including a number of units and beds which, when combined with the units and beds in Phase 1, do not exceed the City entitlement approvals for the total Project.

The Project is more particularly described in that Planned Area Development approved by City Council on November 3, 2011.

Exhibit C
Schedule of Performance

1. Substantially Complete Phase I of the Project within two (2) years after the Effective Date.

EXHIBIT D
DEED

When recorded, return to:
City of Tempe Basket

EXEMPT PER
A.R.S. §11-1134A.3

SPECIAL WARRANTY DEED

For and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, _____, a _____ (“Grantor”) does hereby sell and convey to CITY OF TEMPE, an Arizona municipal corporation, the following described real property situated in Maricopa County, Arizona, together with all rights and privileges appurtenant thereto (“Property”):

See Exhibit “A” attached hereto and by this reference incorporated herein.

SUBJECT TO all taxes and assessments, reservations, any and all easements, rights-of-way, covenants, conditions, restrictions, liens and encumbrances of record or that would be shown by an accurate survey. Grantor does warrant and agree to defend the title against its acts and none other.

DATED this ____ day of _____, 2012.

[insert signature block]

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by _____.

Notary Public

My Commission Expires:

EXHIBIT A
To Special Warranty Deed

Property

PARCEL 1: LOT 1, 323 EAST VETERANS WAY, ACCORDING TO BOOK 954 OF MAPS, PAGE 20, OFFICIAL RECORDS OF MARICOPA COUNTY, ARIZONA.

PARCEL 2: THAT BENEFICIAL AND APPURTENANT EASEMENT FOR INGRESS AND EGRESS AS SET FORTH IN INSTRUMENT NUMBER 2006-1648123, OFFICIAL RECORDS OF MARICOPA COUNTY.

EXHIBIT E
LAND AND IMPROVEMENTS LEASE

WHEN RECORDED, RETURN TO:

City of Tempe Basket

LAND AND IMPROVEMENTS LEASE

THIS LAND AND IMPROVEMENTS LEASE (“**Lease**”) is made and entered into as of the _____ day of _____, 201____ (the “Effective Date”) by and between the **CITY OF TEMPE**, a municipal corporation (“**Landlord**”), and Core Campus Tempe I LLC, a Delaware limited liability company (“**Tenant**”).

RECITALS

- A. Landlord has title of record to the real property as described in ***Exhibit A*** hereto (the “**Land**”), together with all rights and privileges appurtenant thereto and all improvements and future additions thereto or alterations thereof (collectively, the “**Premises**”).
- B. The Premises are located in a single central business district in a redevelopment area established pursuant to Title 36, Chapter 12, Article 3 of Arizona Revised Statutes (A.R.S. §§36-1471 et seq.). Tenant’s construction of the Premises resulted in an increase in property value of at least one hundred percent.
- C. The Premises will be subject to the Government Property Lease Excise Tax as provided for under A.R.S. §42-6203 (A).

AGREEMENT

For and in consideration of the rental and of the covenants and agreements hereinafter set forth to be kept and performed by Tenant, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises for the term, at the rental and subject to and upon all of the terms, covenants and agreements hereinafter set forth.

1. Quiet Enjoyment. Landlord covenants and agrees with Tenant that conditioned upon Tenant’s paying the Total Rent (defined in Section 3) herein provided and performing and fulfilling, in all material respects, the covenants, agreements, conditions and provisions herein to be kept, observed or performed by Tenant (taking into account any applicable cure period), Tenant may at all times during the term hereof peaceably, quietly and exclusively have, hold and enjoy the Premises.

2. Term. The term of this Lease shall be for 6 years, commencing on the Effective Date and ending, at midnight on the earlier of the 6th anniversary of the Effective Date or May, 20, 2020, subject to earlier termination at Tenant's option, as provided herein.

3. Rental. Tenant covenants to pay to Landlord as rental for the Premises the sum of \$10.00 per year on the Effective Date and every anniversary thereof (the "Total Rent"). Tenant shall have the right to prepay the \$60.00 Total Rent for the entire term of this Lease. The consideration for this Lease includes, without limitation: Tenant's payment of the entire cost of construction of the improvements constituting the Premises, Tenant's performance, in all material respects, of the covenants and obligations under this Lease and Tenant's contribution toward fulfillment of Landlord's policy and desire to promote development within a redevelopment area, to encourage the creation of jobs within the City of Tempe, and to enhance tax revenues resulting from the operation of businesses on the Premises, including transaction privilege taxes. Tenant, at its option and without prejudice to its right to terminate this Lease as provided herein, may prepay the Total Rent for the entire lease term, but upon any early termination of this Lease, Landlord shall not be obligated to refund any portion of the prepaid Total Rent.

4. Leasehold Mortgage of Premises.

4.1 Subject to the applicable provisions of this Lease, Tenant is hereby given the absolute right without the Landlord's consent to create a security interest in Tenant's leasehold interest under this Lease (and in any subleases and the rents, income and profits therefrom) by mortgage, deed of trust, collateral assignment or otherwise. Any such security interest shall be referred to herein as a "Leasehold Mortgage," and the holder of a Leasehold Mortgage shall be referred to herein as a "Leasehold Mortgagee." In addition, if landlord holds title to the premises subject to the lien of a fee deed of trust executed by tenant as trustor prior to the acquisition of the premises by landlord, then (i) such fee deed of trust shall be deemed to be a leasehold mortgage for the purposes of this lease, (ii) the beneficiary under such fee deed of trust shall be deemed to be a leasehold mortgagee for the purposes of this lease and shall be entitled to all of the rights and privileges of a leasehold mortgagee under the terms and provisions of this lease, (iii) such fee deed of trust shall be deemed to be the most senior leasehold mortgage, and (iv) the beneficiary under such fee deed of trust shall be deemed to have satisfied the notice requirements under section 17.2. If JP Morgan Chase Bank, N.A. is the beneficiary of such fee deed of trust, then the name and address of such beneficiary for notice purposes shall be:

JP Morgan Chase Bank, N.A.,
10 South Dearborn, 19th floor,
Chicago, Illinois 60603,
Attention: Thomas J. Reynolds

With a copy to:

Attention: Deborah a. Boban
201 North Central Avenue, Floor 14, AZ1 1328
Phoenix, Arizona 85004-0073

4.2 No liability for the performance of Tenant's covenants and agreements hereunder shall attach to or be imposed upon any Leasehold Mortgagee, unless such Leasehold Mortgagee forecloses its interest and becomes the Tenant hereunder, following which the liability shall attach only during the term of ownership of the leasehold estate by said Leasehold Mortgagee.

5. Taxes; Lease Obligations.

5.1 Payment. Tenant shall pay and discharge all general and special real estate and/or personal property taxes and assessments levied or assessed against or with respect to the Premises during the term hereof and all charges, assessments or other fees payable with respect to or arising out of this Lease and all recorded deed restrictions affecting or relating to the Premises. Any sales, use, excise or transaction privilege tax consequence incurred by Landlord because of this Lease or in relation to the Premises or improvements included therein may be passed on to the Tenant either directly if applicable or as "additional rent."

5.2 Enhanced Services District Assessments. Tenant acknowledges that the Property is located within an Enhanced Services District and that the Premises are subject to an assessment that would normally be collected along with property taxes. In addition to all other amounts that Tenant is required to pay hereunder, Tenant shall pay to City all amounts assessed against the Premises by reason of its inclusion in the Enhanced Services District, semiannually within thirty (30) days after City submits written request for payment.

5.2 Protest. Tenant may, at its own cost and expense, protest and contest, by legal proceedings or otherwise, the validity or amount of any such tax or assessment herein agreed to be paid by Tenant and shall first pay said tax or assessment under protest if legally required as a condition to such protest and contest, and the Tenant shall not in the event of and during the bona fide prosecution of such protest or proceedings be considered in default with respect to the payment of such taxes or assessments in accordance with the terms of this Lease.

5.3 Procedure. Landlord agrees that any proceedings contesting the amount or validity of taxes or assessments levied against the Premises or against the rentals payable hereunder may be filed or instituted in the name of Landlord or Tenant, as the case may require or permit, and the Landlord does hereby appoint the Tenant as its agent and attorney-in-fact, during the term of this Lease, to execute

and deliver in the name of the Landlord any document, instrument or pleading as may be reasonably necessary or required in order to carry on any contest, protest or proceeding contemplated in this Section. Tenant shall hold the Landlord harmless from any liability, damage or expense incurred or suffered in connection with such proceedings.

5.4 Allocation. All payments contemplated by this Section 5 shall be prorated for partial years at the Effective Date and at the end of the Lease term.

6. Use. Subject to the applicable provisions of this Lease and A.R.S. §42-6201(2), the Premises may be used and occupied by Tenant for any lawful purpose, including without limitation the sale of alcoholic beverages, subject to Tenant obtaining all required permits, licenses, and approvals from the Arizona Department of Liquor Licenses and Control.

7. Landlord Non-Responsibility. Landlord shall have no responsibility, obligation or liability under this Lease whatsoever with respect to any of the following:

7.1 Utilities, including gas, heat, water, light, power, telephone, sewage, and any other utilities supplied to the Premises;

7.2 Disruption in the supply of services or utilities to the Premises;

7.3 Maintenance, repair or restoration of the Premises;

7.4 Any other cost, expense, duty, obligation, service or function related to the Premises.

8. Entry by Landlord. Landlord and Landlord's agents shall have the right at reasonable times and upon reasonable notice to enter upon the Premises for inspection, except that Landlord shall have no right to enter portions of any building on the Premises without consent of the occupant or as provided by law.

9. Alterations. Subject to the applicable provisions of this Lease, Tenant shall have the right, in its sole and absolute discretion, and without the consent of Landlord, to construct additional improvements on the Premises, and to make subsequent alterations, additions or other changes to any improvements or fixtures on the Premises existing from time to time, and the Premises shall constitute all such improvements as they exist from time to time. In connection with any action which Tenant may take with respect to Tenant's rights pursuant hereto, Landlord shall not be responsible for and Tenant shall pay all costs, expenses and liabilities arising out of or in any way connected with such improvements, alterations, additions or other changes made by Tenant, including without limitation materialmen's and mechanic's liens. Tenant covenants and agrees that Landlord shall not be called upon or be obligated to make any improvements, alterations or repairs whatsoever in or about the Premises, and Landlord shall not be liable or accountable for any damages to the Premises or any property located thereon. Tenant shall have the right,

in its sole and absolute discretion, and without the consent of Landlord, at any time to demolish or substantially demolish improvements located upon the Premises (provided that this Lease shall terminate if the Premises are so demolished). In making improvements and alterations, Tenant shall not be deemed Landlord's agent and shall hold Landlord harmless from any expense or damage Landlord may incur or suffer. During the term of this Lease, title to all improvements shall at all times be vested in Landlord.

10. Easements, Dedications and Other Matters. At the request of Tenant, and provided that no Event of Default (as defined in Section 17.1) shall have then occurred and be continuing, Landlord shall dedicate or initiate a request for dedication to public use of the improvements owned by Landlord within any roads, alleys or easements and convey any portion so dedicated to the appropriate governmental authority, execute (or participate in a request for initiation by the appropriate commission or department of) petitions seeking annexation or change in zoning for all or a portion of the Premises, consent to the making and recording, or either, of any map, plat, condominium documents, or declaration of covenants, conditions and restrictions of or relating to the Premises or any part thereof, join in granting any easements on the Premises, and execute and deliver (in recordable form where appropriate) all other instruments and perform all other acts reasonably necessary or appropriate to the development, construction, demolition, redevelopment or reconstruction of the Premises.

11. Insurance. During the term of this Lease, the Tenant shall, at Tenant's expense, maintain general public liability insurance against claims for personal injury, death or property damage occurring in, upon or about the Premises. The limitation of liability of such insurance shall not be less than \$5,000,000.00 combined single limit. The minimum policy limits shall be increased whenever deemed appropriate by Landlord's Risk Management to adequately reflect current market conditions. All of Tenant's policies of liability insurance shall name Landlord and all Leasehold Mortgagees as additional insureds, and, at the written request of Landlord, certificates with respect to all policies of insurance or copies thereof required to be carried by Tenant under this Section 11 shall be delivered to Landlord. Each policy shall contain an endorsement prohibiting cancellation or non-renewal without at least thirty (30) days prior notice to Landlord (ten (10) days for nonpayment). Tenant may self-insure the coverages required by this Section with the prior approval of Landlord, which will not be unreasonably withheld, and may maintain such reasonable deductibles and retention amounts as Tenant may determine.

12. Liability; Indemnity. Tenant covenants and agrees that Landlord is to be free from liability and claim for damages by reason of any injury to any person or persons, including Tenant, or property of any kind whatsoever and to whomsoever while in, upon or in any way connected with the Premises during the term of this Lease or any extension hereof, or any occupancy hereunder, Tenant hereby covenanting and agreeing to indemnify and save harmless Landlord from all liability, loss, costs and obligations on account of or arising out of any such injuries or losses, however occurring, unless caused by the sole and gross negligence or willful misconduct of Landlord, its agents, employees, or invitees. Landlord agrees that Tenant shall have the right to contest the validity of any and all such claims and defend, settle and compromise any and all such claims of any kind or character

and by whomsoever claimed, in the name of Landlord, as Tenant may deem necessary, provided that the expenses thereof shall be paid by Tenant. The provisions of this Section shall survive the expiration or other termination of this Lease.

13. Fire and Other Casualty. In the event that all or any portion of any improvements or fixtures within the Premises shall be totally or partially destroyed or damaged by fire or other casualty, then, at Tenant's election, either: (i) this Lease shall continue in full force and effect, and, subject to the applicable provisions of this Lease, Tenant, at Tenant's sole cost and expense, may, but shall not be obligated to, rebuild or repair the same; or (ii) this Lease shall terminate with respect to all of the Premises or to such portions of the Premises as Tenant may elect. Landlord and Tenant agree that the provisions of A.R.S. § 33-343 shall not apply to this Lease. In the event that, subject to the applicable provisions of this Lease, Tenant elects to repair or rebuild the improvements, any such repair or rebuilding shall be performed at the sole cost and expense of Tenant. If there are insurance proceeds resulting from such damage or destruction, Tenant shall be solely entitled to such proceeds, whether or not Tenant rebuilds or repairs the improvements or fixtures, subject to the applicable provisions of this Lease and of any Leasehold Mortgage.

14. Condemnation.

14.1 Entire or Partial Condemnation. If the whole or any part of the Premises shall be taken or condemned by any competent authority for any public use or purposes during the term of the Lease, this Lease shall terminate with respect to the part of the Premises so taken and any other portion of the Premises as may be specified by Tenant, and, subject to the applicable provisions of this Lease, Tenant reserves unto itself the right to claim and prosecute its claim in all appropriate courts and agencies for any award or damages based upon loss, damage or injury to its leasehold interest (as well as relocation and moving costs). In consideration of Tenant's payment for all of the cost of construction of the improvements constituting the Premises, Landlord hereby assigns to Tenant all claims, awards and entitlements relating to the Premises arising from the exercise of the power of condemnation or eminent domain.

14.2 Continuation of Lease. In the event of a taking of less than all of the Premises, this Lease shall continue in effect with respect to the portion of the Premises not so taken or specified by Tenant to be removed from this Lease.

14.3 Temporary Taking. If the temporary use of the whole or any part of the Premises or the appurtenances thereto shall be taken, the term of this Lease shall not be reduced or affected in any way. The entire award of such taking (whether paid by way of damages, rent, or otherwise) shall be payable to Tenant, subject to the applicable provisions of this Lease and of any Leasehold Mortgage.

14.4 Notice of Condemnation. In the event any action is filed to condemn the Premises or Tenant's leasehold estate or any part thereof by any

public or quasi-public authority under the power of eminent domain or in the event that an action is filed to acquire the temporary use of the Premises or Tenant's leasehold estate or any part thereto, or in the event that action is threatened or any public or quasi-public authority communicates to Landlord or Tenant its desire to acquire the temporary use thereof, by a voluntary conveyance or transfer in lieu of condemnation, either Landlord or Tenant shall give prompt notice thereof to the other and to any Leasehold Mortgagee. Landlord, Tenant and each Leasehold Mortgagee shall each have the right, at its own cost and expense, to represent its respective interest in each proceeding, negotiation or settlement with respect to any taking or threatened taking. No agreement, settlement, conveyance or transfer to or with the condemning authority affecting Tenant's leasehold interest shall be made without the consent of Tenant and each Leasehold Mortgagee.

15. Termination Option.

15.1 Grant of Option. In the event changes in applicable law nullify, remove, or vitiate the economic benefit to Tenant provided by this Lease, or if any person or entity succeeds to Tenant's interest hereunder by foreclosure sale, trustee's sale, or deed in lieu of foreclosure (collectively, "**Foreclosure**"), or if Tenant, in its sole and absolute discretion, so elects for any or no reason, Tenant or Tenant's successor by Foreclosure shall have the option ("Option"), exercisable by written notice to Landlord, to terminate this Lease as to the entire Premises or as to such portions of the Premises as Tenant may specify, in each case, effective thirty (30) days after the date of the notice. Upon default under the Leasehold Mortgage (after giving effect to all applicable notice and cure rights), Tenant or Leasehold Mortgagee shall have the option, exercisable by written notice to Landlord, to terminate this Lease effective twenty (20) days after the date of the notice.

15.2 Title Vesting in Tenant. Simultaneously with, and effective as of, any termination of this Lease, title to the Premises (including all improvements constituting a part thereof) shall automatically vest in Tenant and Landlord shall comply with the obligations under Article 31.

15.3 Leasehold Mortgagees and Tenant. If there are any Leasehold Mortgagees as defined in Section 4.1, Tenant may not as of such time terminate, modify or waive its Option under this Section without the written approval of the Leasehold Mortgagees, and Landlord will not recognize or consent thereto without such approval.

16. Assignment, Subletting.

16.1 Transfer by Tenant. At any time and from time to time Tenant shall have the right (in its sole discretion) to assign this Lease and Tenant's leasehold interest or to sublease all of or any part of the Premises to any person or entity for any use permitted under this Lease, without the consent of the Landlord.

16.2 Liability. Each assignee, other than any residential subtenant, hereby assumes all of the obligations of Tenant under this Lease (but not for liabilities or obligations arising prior to such assignment becoming effective). Each assignment shall automatically release the assignor from any personal liability in respect of any obligations or liabilities arising under this Lease from and after the date of assignment, and Landlord shall not seek recourse for any such liability against any assignor or its personal assets. Landlord agrees that performance by a subtenant or assignee of Tenant's obligations under this Lease shall satisfy Tenant's obligations hereunder and Landlord shall accept performance by any such subtenant.

17. Default Remedies; Protection of Leasehold Mortgagee and Subtenants.

17.1 Default. The failure by Tenant to observe and perform any material provision of this Lease to be observed or performed by Tenant, or a failure by Tenant to pay any Tax when due, where such failure continues for sixty (60) days after written notice thereof by Landlord to Tenant, shall constitute an "**Event of Default**"; provided, however, that if the nature of such default is such that the same cannot reasonably be cured within such sixty (60) day period, no Event of Default shall be deemed to have occurred if Tenant shall within such period commence such cure and thereafter diligently prosecute the same to completion.

17.2 Remedies. Upon the occurrence of an Event of Default, Landlord may at any time during the continuance thereof, by written notice to Tenant, terminate this Lease, in which case Tenant shall immediately surrender possession of the Premises to Landlord. This Section constitutes the provision required under A.R.S. §42-6206(2) that failure by the prime lessee to pay the Tax after notice and an opportunity to cure is an event of default that could result in divesting the prime lessee of any interest or right or occupancy of the government property improvement.

17.3 Leasehold Mortgagee Default Protections. If any Leasehold Mortgagee shall give written notice to Landlord of its Leasehold Mortgage, together with the name and address of the Leasehold Mortgagee, then, notwithstanding anything to the contrary in this Lease, until the time, if any, that the Leasehold Mortgage shall be satisfied and released of record or the Leasehold Mortgagee shall give to Landlord written notice that said Leasehold Mortgage has been satisfied, Landlord shall provide written notice of any default under this Lease to Leasehold Mortgagee and Leasehold Mortgagee shall have the rights described in Section 20 of this Lease.

18. Consent of Leasehold Mortgagee. No act or agreement between or on the part of Landlord or Tenant to cancel, terminate, surrender, amend, or modify this Lease or Tenant's right to possession shall be binding upon or effective as against the Leasehold Mortgagee without its prior written consent.

19. Notice to Leasehold Mortgagee. If Landlord shall give any notice, demand, election or other communication required hereunder (hereafter collectively “**Notices**”) to Tenant hereunder, Landlord shall concurrently give a copy of each such Notice to the Leasehold Mortgagee at the address designated by the Leasehold Mortgagee. Such copies of Notices shall be sent by registered or certified mail, return receipt requested or by overnight delivery, and shall be deemed given seventy-two (72) hours after the time such copy is deposited in a United States Post Office with postage charges prepaid, addressed to the Leasehold Mortgagee or when received if sent by overnight mail. No Notice given by Landlord to Tenant shall be binding upon or affect Tenant or the Leasehold Mortgagee unless a copy of the Notice shall be given to the Leasehold Mortgagee pursuant to this Section. In the case of an assignment of the Leasehold Mortgage or change in address of the Leasehold Mortgagee, the assignee or Leasehold Mortgagee, by written notice to Landlord, may change the address to which such copies of Notices are to be sent.

20. Leasehold Mortgagee Cure Rights. The Leasehold Mortgagee shall have the right for a period of thirty (30) days after the expiration of any grace period afforded Tenant to perform any term, covenant, or condition under this Lease and to remedy any Event of Default by Tenant hereunder or such longer period as the Leasehold Mortgagee may reasonably require to affect a cure, and Landlord shall accept such performance with the same force and effect as if furnished by Tenant, and the Leasehold Mortgagee shall thereby and hereby be subrogated to the rights of Landlord. The Leasehold Mortgagee shall have the right to enter upon the Premises to give such performance.

21. Prosecution of Foreclosure or Other Proceedings. In case of an Event of Default by Tenant in the performance or observance of any nonmonetary term, covenant or condition to be performed by it hereunder, if such default cannot practicably be cured by the Leasehold Mortgagee without taking possession of the Premises, in such Leasehold Mortgagee’s reasonable opinion, or if such default is not susceptible of being cured by the Leasehold Mortgagee, then Landlord shall not serve a notice of lease termination pursuant to Section 17.2, if and so long as:

(i) the Leasehold Mortgagee shall proceed diligently to obtain possession of the Premises as mortgagee (including possession by a receiver), and, upon obtaining such possession, shall proceed diligently to cure Events of Default as are reasonably susceptible of cure (subject to any order by a court of competent jurisdiction staying or otherwise precluding such Leasehold Mortgagee from obtaining such possession); or

(ii) the Leasehold Mortgagee shall institute foreclosure proceedings and diligently prosecute the same to completion (unless in the meantime it shall acquire Tenant’s estate hereunder, either in its own name or through a nominee, by assignment in lieu of foreclosure and subject to any order by a court of competent jurisdiction staying or otherwise precluding such Leasehold Mortgagee from obtaining such possession).

22. Effect of Cure Upon Event of Default. The Leasehold Mortgagee shall not be required to obtain possession or to continue in possession as mortgagee of the Premises pursuant to Section 21(i) above, or to continue to prosecute foreclosure proceedings pursuant to Section 21(ii) above, if and when such Event of Default shall be cured. If a Leasehold Mortgagee, its nominee, or a purchaser at a foreclosure sale shall acquire title to Tenant's leasehold estate hereunder, an Event of Default that is not reasonably susceptible to cure by the person succeeding to the leasehold interest shall no longer be deemed an Event of Default hereunder.

23. Extension of Foreclosure or Other Proceedings. If any Leasehold Mortgagee is prohibited from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Tenant, the times specified in Sections 21(i) and (ii) above, for commencing or prosecuting foreclosure or other proceedings shall be extended for the period of the prohibition.

24. Additional Consent of Leasehold Mortgagee. No option of Tenant hereunder may be exercised, and no consent of Tenant allowed or required hereunder, shall be effective without the prior written consent of any Leasehold Mortgagee.

24.1 Protection of Subtenant. Landlord covenants that notwithstanding any default under or termination of this Lease or of Tenant's possessory rights, Landlord: (i) so long as a subtenant within the Premises complies with the terms and conditions of its sublease, shall not disturb the peaceful possession of the subtenant under its sublease, and in the event of a default by a subtenant, Landlord may only disturb the possession or other rights of the subtenant as provided in the Tenant's sublease, (ii) shall recognize the continued existence of the sublease, (iii) shall accept the subtenant's attornment, as subtenant under the sublease, to Landlord, as landlord under the sublease, and (iv) shall be bound by the provisions of the sublease, including all options, and shall execute documents as may be reasonably required by such subtenants to evidence these agreements. Notwithstanding anything to the contrary in this Lease, no act or agreement between or on the part of Landlord or Tenant to cancel, terminate, surrender or modify this Lease or Tenant's right to possession shall be binding upon or effective as against any subtenant without its prior written consent.

25. New Lease.

25.1 Right to Lease. Landlord agrees that, in the event of termination of this Lease for any reason (including but not limited to any Event of Default by Tenant), Landlord, if requested by any Leasehold Mortgagee, will enter into a new lease of the Premises with the most senior Leasehold Mortgagee requesting a new lease, which new lease shall commence as of the date of termination of this Lease and shall run for the remainder of the original term of this Lease, at the rent and upon the terms, covenants and conditions herein contained, provided:

- a. Such Leasehold Mortgagee shall make written request upon Landlord for the new lease within sixty (60) days after the date such Leasehold Mortgagee receives written notice from Landlord that the Lease has been terminated;
- b. Such Leasehold Mortgagee shall pay to Landlord at the time of the execution and delivery of the new lease any and all sums which would, at that time, be due and unpaid pursuant to this Lease but for its termination, and in addition thereto all reasonable expenses, including reasonable attorneys' fees, which Landlord shall have incurred by reason of such termination; and
- c. Such Leasehold Mortgagee shall perform and observe all covenants in this Lease to be performed and observed by Tenant, and shall further remedy any other conditions which Tenant under the Lease was obligated to perform under its terms, to the extent the same are reasonably susceptible of being cured by the Leasehold Mortgagee.

25.2 The Tenant under the new lease shall have the same right of occupancy to the buildings and improvements on the Premises as Tenant had under the Lease immediately prior to its termination.

25.3 Notwithstanding anything to the contrary expressed or implied in this Lease, any new lease made pursuant to this Section 25 shall have the same priority as this Lease with respect to any mortgage, deed of trust, or other lien, charge, or encumbrance on the fee of the Premises, and any sublease under this Lease shall be a sublease under the new Lease and shall not be deemed to have been terminated by their termination of this Lease.

26. No Obligation. Nothing herein contained shall require any Leasehold Mortgagee to enter into a new lease pursuant to Section 25 or to cure any default of Tenant referred to above.

27. Possession. If any Leasehold Mortgagee shall demand a new lease as provided in Section 25, Landlord agrees, at the request of, on behalf of and at the expense of the Leasehold Mortgagee, upon a guaranty from it reasonably satisfactory to Landlord, to institute and pursue diligently to conclusion the appropriate legal remedy or remedies to oust or remove the original Tenant from the Premises, but not any subtenants actually occupying the Premises or any part thereof.

28. Grace Period. Unless and until Landlord has received notice from each Leasehold Mortgagee that the Leasehold Mortgagee elects not to demand a new lease as provided in Section 25, or until the period therefore has expired, Landlord shall not cancel or agree to the termination or surrender of any existing subleases nor enter into any new leases or subleases with respect to the Premises without the prior written consent of each Leasehold Mortgagee.

29. Effect of Transfer. Neither the foreclosure of any Leasehold Mortgage (whether by judicial proceedings or by virtue of any power of sale contained in the Leasehold Mortgage), nor any conveyance of the leasehold estate created by this Lease by Tenant to any Leasehold Mortgagee or its designee by an assignment or by a deed in lieu of foreclosure or other similar instrument shall require the consent of Landlord under, or constitute a default under, this Lease, and upon such foreclosure, sale or conveyance, Landlord shall recognize the purchaser or other transferee in connection therewith as the Tenant under this Lease.

30. No Merger. In no event shall the leasehold interest, estate or rights of Tenant hereunder, or of any Leasehold Mortgagee, merge with any interest, estate or rights of Landlord in or to the Premises. Such leasehold interest, estate and rights of Tenant hereunder, and of any Leasehold Mortgagee, shall be deemed to be separate and distinct from Landlord's interest, estate and rights in or to the Premises, notwithstanding that any such interests, estates or rights shall at any time be held by or vested in the same person, corporation or other entity.

31. Surrender, Reconveyance.

31.1 Reconveyance Upon Termination or Expiration. On the last day of the term of this Lease or upon any termination of this Lease, whether under Article 15 above or otherwise, title to the Premises (including all improvements constituting a part thereof) shall automatically vest in Tenant at no cost or expense to Tenant other than as set forth in Section 33 below.

31.2 Reconveyance Documents. Without limiting the foregoing, Landlord upon request shall execute and deliver to Tenant: (i) a special warranty deed reconveying all of Landlord's right title and interest in the Premises (including all improvements constituting a part thereof) to Tenant; (ii) a memorandum in recordable form reflecting the termination of this Lease; (iii) an assignment of Landlord's right, title and interest in and to all licenses, permits, guaranties and warranties relating to the ownership or operation of the Premises to

which Landlord is a party and which are assignable by Landlord; and (iv) such other reasonable and customary documents as may be required by Tenant or its title insurer including, without limitation, FIRPTA and mechanic's lien affidavits, to confirm the termination of this Lease and the revesting of title to the Premises (including all improvements constituting a part thereof) in all respects in Tenant.

32. Title and Warranties. Notwithstanding anything to the contrary in this Section, Landlord shall convey the Premises to Tenant subject only to: (i) matters affecting title as of the date of this Lease, and (ii) matters created by or with the written consent of Tenant. The Premises shall be conveyed "AS IS" without representation or warranty whatsoever. Notwithstanding the prohibition on the creation of any liens by or through Landlord set forth in this Section, upon any reconveyance, Landlord shall satisfy all liens and monetary encumbrances on the Premises created by Landlord.

33. Expenses. All costs of title insurance, escrow fees, recording fees and other expenses of the reconveyance to Tenant, except Landlord's own attorneys' fees and any commissions payable to any broker retained by Landlord, shall be paid by Tenant.

34. Trade Fixtures, Machinery and Equipment. Landlord agrees that all trade fixtures, machinery, equipment, furniture or other personal property of whatever kind and nature kept or installed on the Premises by Tenant or Tenant's subtenants may be removed by Tenant or Tenant's subtenants, or their agents and employees, in their discretion, at any time and from time to time during the entire term or upon the expiration of this Lease. Tenant agrees that in the event of damage to the Premises due to such removal it will repair or restore the same. Upon request of Tenant or Tenant's assignees or any subtenant, Landlord shall execute and deliver any consent or waiver forms submitted by any vendors, landlords, chattel mortgagees or holders or owners of any trade fixtures, machinery, equipment, furniture or other personal property of any kind and description kept or installed on the Premises by any subtenant setting forth the fact that Landlord waives, in favor of such vendor, landlord, chattel mortgagee or any holder or owner, any lien, claim, interest or other right therein superior to that of such vendor, Landlord, chattel mortgagee, owner or holder. Landlord shall further acknowledge that property covered by such consent or waiver forms is personal property and is not to become a part of the realty no matter how affixed thereto and that such property may be removed from the Premises by the vendor, landlord, chattel mortgagee, owner or holder at any time upon default by the Tenant or the subtenant in the terms of such chattel mortgage or other similar documents, free and clear of any claim or lien of Landlord.

35. Estoppel Certificate. Landlord shall at any time and from time to time upon not less than ten (10) days' prior written notice from Tenant or any Leasehold Mortgagee execute, acknowledge and deliver to Tenant or the Leasehold Mortgagee a statement in writing (i) certifying that this Lease is unmodified and in full force and effect (or if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and the dates to which the rental and other charges are paid in advance, if any; (ii) acknowledging that there are not, to Landlord's knowledge, any uncured defaults on the part of Tenant hereunder, or specifying such defaults if they are

claimed; and (iii) certifying such other matters relating to this Lease as Tenant or the Leasehold Mortgagee may reasonably request. Any such statement may be relied upon by any prospective purchaser or encumbrancer of all or any portion of the leasehold estate and/or the improvements.

Landlord's failure to deliver a statement within the time prescribed shall be conclusive upon Landlord (i) that this Lease is in full force and effect, without modification except as may be represented by Tenant; (ii) that there are no uncured defaults in Tenant's performance; and (iii) the accuracy of such other matters relating to this Lease as Tenant as may have been set forth in the request.

36. General Provisions.

36.1 Attorneys' Fees. In the event of any suit instituted by either party against the other in any way connected with this Lease or for the recovery of possession of the Premises, the parties respectively agree that the successful party to any such action shall recover from the other party a reasonable sum for its attorneys' fees and costs in connection with said suit.

36.2 Transfer or Encumbrance of Landlord's Interest. Landlord may not transfer or convey its interest in this Lease or in the Premises during the term of this Lease without the prior written consent of Tenant, which consent may be given or withheld in Tenant's sole and absolute discretion. In the event of the permitted sale or conveyance by Landlord of Landlord's interest in the Premises, other than a transfer for security purposes only, Landlord shall be relieved, from and after the date specified in such notice of transfer, of all obligations and liabilities accruing thereafter on the part of the Landlord, provided that any funds in the hands of Landlord at the time of transfer in which Tenant has an interest, shall be delivered to the successor of Landlord. This Lease shall not be affected by any such sale and Tenant agrees to attorn to the purchaser or assignee provided all of Landlord's obligations hereunder are assumed in writing by the transferee. Landlord shall not grant or create mortgages, deeds of trust or other encumbrances of any kind against the Premises or rights of Landlord hereunder, and, without limiting the generality of the foregoing, Landlord shall have no right or power to grant or create mortgages, deeds of trust or other encumbrances superior to this Lease without the consent of Tenant in its sole and absolute discretion. Any mortgage, deed of trust or other encumbrance granted or created by Landlord shall be subject to this Lease, all subleases and all their respective provisions including, without limitations, the options under this Lease and any subleases with respect to the purchase of the Premises.

36.3 Captions; Attachments; Defined Terms.

- a. The captions of the sections of this Lease are for convenience only and shall not be deemed to be relevant in resolving any question of interpretation or construction of any section of this Lease.

- b. Exhibits attached hereto, and addendums and schedules initialed by the parties, are deemed by attachment to constitute part of this Lease and are incorporated herein.
- c. The words "Landlord" and "Tenant", as used herein, shall include the plural as well as the singular. The obligations contained in this Lease to be performed by Tenant and Landlord shall be binding on Tenant's and Landlord's successors and assigns only during their respective periods of ownership.

36.4. Entire Agreement. This Lease and the Development Agreement between Landlord and Tenant, along with any addenda, exhibits and attachments hereto or thereto, constitutes the entire agreement between Landlord and Tenant relative to the Premises and this Lease, the Development Agreement and the addenda, exhibits and attachments may be altered, amended or revoked only by an instrument in writing signed by the party to be bound thereby. Landlord and Tenant agree hereby that all prior or contemporaneous oral agreements between and among themselves and their agents or representatives relative to the leasing of the Premises are merged in or revoked by this Lease and the Development Agreement, except as set forth in any addenda hereto or thereto.

36.5 Severability. If any term or provision of this Lease shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforceable to the fullest extent permitted by law.

36.6 Binding Effect; Choice of Law. The parties hereto agree that all the provisions hereof are to be construed as both covenants and conditions as though the words importing such covenants and conditions were used in each separate paragraph hereof. All of the provisions hereof shall bind and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns. This Lease shall be governed by the laws of the State of Arizona.

36.7 Memorandum of Land and Improvements Lease. The parties shall, concurrently with the execution of this Lease, complete, execute, acknowledge and record (at Tenant's expense) a Memorandum of Land and Improvements Lease, a form of which is attached hereto as Exhibit B.

36.8 Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given if personally delivered or if mailed by United States certified or registered mail, return receipt requested, postage prepaid, or by overnight mail, as follows:

If to Landlord:

City of Tempe
City Manager's Office
31 East 5th Street
Tempe, Arizona 85281

With a copy to:

City of Tempe
City Attorney's Office
31 East 5th Street
Tempe, Arizona 85281

If to Tenant:
Campus Acquisitions, LLC

If to Tenant:

Marc Lifshin
Core Campus Tempe 1 LLC
2234 W North Ave
Chicago, IL 60647

With a copy to:

Manjula Vaz
Gammage & Burnham
Two North Central, Suite 1800
Phoenix, AZ 85004
and

David Nelson
DRW Holdings LLC
540 W. Madison, Suite 2500
Chicago, IL 60661

or at such other place or to such other persons as any party shall from time to time notify the other in writing as provided herein. The date of service of any communication hereunder shall be the date of personal delivery or seventy-two (72) hours after the postmark on the certified or registered mail, or the date received if sent by overnight mail, as the case may be.

36.9 Waiver. No covenant, term or condition or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver or the breach of any covenant, term or condition shall

not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition.

36.10 Negation of Partnership. Landlord shall not become or be deemed a partner or a joint venturer with Tenant by reason of the provisions of this Lease.

36.11 Hold Over. If Tenant shall continue to occupy the Premises after the expiration of the term hereof without the consent of Landlord, such tenancy shall be from month to month on the same terms and conditions as are set forth herein.

36.12 Leasehold Mortgagee Further Assurances. Landlord and Tenant shall cooperate in, including by suitable amendment from time to time of any provision of this Lease which may be reasonably requested by any proposed Leasehold Mortgagee for the purpose of implementing the mortgagee-protection provisions contained in this Lease, allowing that Leasehold Mortgagee reasonable means to protect or preserve the lien of its Leasehold Mortgage upon the occurrence of a default under the terms of this Lease and of confirming the elimination of the ability of Tenant to modify, terminate or waive this Lease or any of its provisions without the prior written approval of the Leasehold Mortgagee. Landlord and Tenant each agree to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement necessary to effect any such amendment; provided, however, that any such amendment shall not in any way affect the term or rent under this Lease nor otherwise in any material respect adversely affect any rights of Landlord under this Lease.

37. Nonrecourse. Landlord's sole recourse for collection or enforcement of any judgment as against Tenant shall be solely against the leasehold interest under this Lease and the improvements on the Premises and may not be enforced against or collected out of any other assets of Tenant nor of its beneficiaries, joint venturers, owners, partners, shareholders, members or other related parties.

IN WITNESS WHEREOF, the parties hereto have executed this Lease on the date and year first written above.

ATTEST:

LANDLORD:

By: _____
City Clerk

CITY OF TEMPE, a municipal corporation

APPROVED AS TO FORM:

By: _____
Name: _____
Title: _____

City Attorney

TENANT:

Core Campus Tempe 1 LLC, a
Delaware limited liability company

By: DRW Real Estate Management I
LLC

Its: Manager

By: _____
Name _____
Title _____

STATE OF ARIZONA)
)
COUNTY OF MARICOPA) ss

The foregoing instrument was acknowledged before me this ____ day of
_____, 2011.

Notary Public

My Commission Expires:

EXHIBIT “A”

Land

PARCEL 1: LOT 1, 323 EAST VETERANS WAY, ACCORDING TO BOOK 954 OF MAPS, PAGE 20, OFFICIAL RECORDS OF MARICOPA COUNTY, ARIZONA.

PARCEL 2: THAT BENEFICIAL AND APPURTENANT EASEMENT FOR INGRESS AND EGRESS AS SET FORTH IN INSTRUMENT NUMBER 2006-1648123, OFFICIAL RECORDS OF MARICOPA COUNTY.

EXHIBIT "B"
of Land and Improvement Lease

WHEN RECORDED, RETURN TO:

MEMORANDUM OF LAND AND IMPROVEMENTS LEASE

THIS MEMORANDUM OF LAND AND IMPROVEMENTS LEASE ("Memorandum") is made and entered into as of the ____ day of _____, 201__, by and between the CITY OF TEMPE, an Arizona municipal corporation ("City"), and Core Campus Tempe I LLC, a Delaware limited liability company ("Tenant").

1. The City and Tenant have entered into that certain Land and Improvements Lease, dated _____, 201__ ("Lease"), whereby the City leases to Tenant that real property and improvements more particularly described in Exhibit "A" attached hereto and by this reference incorporated herein ("Property").

2. This Memorandum is being recorded to give constructive notice to all persons dealing with the Property that the City leases to Tenant the Property, and that the City and Tenant consider the Lease to be a binding agreement between the City and Tenant regarding the Property.

3. This Memorandum is not a complete summary of the Lease. The provisions of this Memorandum shall not be used in interpreting the Lease. In the event of any conflict between the terms and provisions of this Memorandum and the Lease, the terms and provisions of the Lease shall govern and control.

IN WITNESS WHEREOF, this Memorandum has been executed as of the day and year first set forth above.

[insert signature block for Tenant]

STATE of)
) ss.
County of)

The foregoing instrument was acknowledged before me this ____ day of _____ 200__ by _____, _____ of CITY OF TEMPE, an Arizona municipal corporation.

Notary Public

My Commission Expires:

STATE of)
) ss.
County of)

 The foregoing instrument was acknowledged before me this ____ day of _____,
200__ by _____.

Notary Public

My Commission Expires:
